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April 17, 2014

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BY FACSIMILE (202) 219-3923

OFFICE OF GENERAL
COUNSEL

Mr. Jeff S. Jordan, Esq.
Federal Election Commission
999 E Street, NW
Washington, District of Columbia 20463

Re: MUR # 6785

**Response of Kawsman for Congress, Adam C. Kwasman, Treasurer,
to the Complaint Filed by Scott Kalota**

Dear Mr. Jordan:

On behalf of Kawsman for Congress (the "Committee"), Adam C. Kwasman ("Rep. Kwasman"), Treasurer, I write to respond to the Complaint filed by Scott Kalota in MUR #6785. The Complaint makes eight allegations, each of which are addressed in turn, below. At bottom, some of the matters the Complaint raises are not legal violations, other matters are inconsequential, and the remaining matters will be addressed by the Commission's Reports Analysis Division and, if warranted, through the Administrative Fine Program. Therefore, I urge the Commission to exercise its prosecutorial discretion and to dismiss the Complaint as not warranting any further use of its time and resources. *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985) (agency may consider best uses of resources, seriousness of violations alleged, in declining to take further action in an enforcement matter).

1. "Conducting campaign activity over a protracted period of time without filing a statement of candidacy with the FEC."

The Complaint correctly states that Rep. Kwasman announced the formation of a congressional exploratory committee on July 8, 2013, and filed a Statement of Candidacy on November 8, 2013. Beyond that, the Complaint claims vaguely that Rep. Kwasman "began referring to himself as a candidate for Congress and using public political advertising to announce his intention to run," and that he "attended multiple events across the district where he discussed his candidacy." However, the Complaint fails to identify any such statements, advertisements or events—let alone to present them with the degree of specificity that would allow Rep. Kwasman to address them or the Commission to evaluate them.

On this point, the only allegation that the Committee can respond to is the claim that Rep. Kwasman conducted activity "over a protracted period of time." 11 C.F.R. §§ 100.73(b)(4) and 100.131(b)(4) provide that an individual is no longer "testing the waters" if he, among other actions, conducts activities "over a protracted period of time."

In this case, the period for which Rep. Kwasman tested the waters was four months. Of course, the length of time over which activities are conducted is far less important than the

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nature of the activities undertaken during that time. Nevertheless, four months is not an objectively unreasonable period of time for an individual to consider whether he should become a candidate. Indeed, in other cases, the Commission has determined that similar or longer periods of time were not "protracted." See, e.g., MUR #4759 (Maloof) (declining to enforce against candidate who tested the waters over four months from September 2 – January 13); MUR #5930 (Schuring) (declining to enforce against candidate who tested the waters over at least four months from June 8 – October 12); MUR #5934 (Thompson) (declining to enforce against candidate who tested the waters over three months from June 4 – September 6). Of course, in all those cases, the Commission made its determination based upon specific statements, activities and expenditures—but in this case, the Complaint identifies no such statements, activities and expenditures. Regardless, Rep. Kwasman did not exceed the scope of the testing the waters exemption, and the Complainant has provided no evidence to the contrary.

2. "Missing the Deadline to File a Statement of Candidacy with the FEC."

11 C.F.R. § 101.1 requires an individual to file a Statement of Candidacy within fifteen days after he becomes a candidate. The Complaint in this matter alleges that Rep. Kwasman "publicly announced on October 21, 2013 he was no longer exploring a candidacy for Congress but was now officially running." Thus, the Complainant calculates, Rep. Kwasman should have filed a Statement of Candidacy on November 4, but did not do so until November 8—a difference of four days.

Assuming for the sake of argument that this allegation is true, a difference of four days between when the Complainant thinks Rep. Kwasman should have filed a Statement of Candidacy and when the statement actually was filed hardly warrants the commencement of a federal regulatory investigation. This is particularly the case where, as here, Rep. Kwasman did not cross a reporting period, such that the public's interest in disclosure of the sources of his campaign financing and the nature of his expenditures would have been frustrated.

3. "Missing the Deadline to File a Statement of Organization with the FEC."

11 C.F.R. § 102.1 requires a principal campaign committee to file a Statement of Organization within ten days after being designated by a candidate. In this matter, the Complaint correctly states that the Committee filed its Statement of Organization on December 9, 2014, which was more than ten days after Rep. Kwasman designated it on his Statement of Candidacy. However, as with the Statement of Candidacy, the Committee did not cross a reporting period, so the public's interest in disclosure was not frustrated. At most, the public did not know—for a period of 21 days in November and December, some three-quarters of a year before the primary election—who the Committee's treasurer would be, the treasurer's contact information, and the bank at which the Committee would deposit its funds. Given that the Committee later filed its Statement of Organization within the reporting period, further investigation of this issue would be fruitless.

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4. "Raising over \$5,000 while 'testing the waters' and not filing a statement of candidacy with the FEC once \$5,000 was contributed to his campaign."

The Complaint asserts that Rep. Kwasman should have filed a Statement of Candidacy once he raised more than \$5,000 in the course of testing the waters for a congressional candidacy. Complainant misapprehends the law on this point. The Commission never before has held that an individual who is testing the waters must register and report once he raises more than \$5,000. Indeed, an individual can raise and spend more than \$5,000 without registering and reporting, as long as his activities are confined to the scope of the testing the waters exemptions. See Statement of Reasons of Chairman Peterson, Commissioners Hunter, McGahn, Walther & Weintraub, MUR 5908 (Hunter) ("An individual may raise and spend more than \$5,000 without triggering candidate status only if he is engaged in permissible 'testing the waters' activities and gives no indication that a decision to run has already been made.")

5. "Missing the deadline to file the 2013 Year End campaign finance report."

The Complaint alleges that the Committee filed its 2013 Year End Report eleven hours late. This is not a matter that should require an investigation by the Commission. It can, and presumably will, be addressed through the Administrative Fine Program.

6. "Accepting donations above the maximum limits for an individual congressional campaign committee."

The Complaint alleges that the Committee disclosed acceptance of three contributions of \$10,000 each on its 2013 Year End Report, but then removed the contributions in an Amended Year End Report, without disclosing corresponding refunds. The Complaint fails to identify the contributions at issue, but regardless, this too is not a matter requiring a federal investigation. This issue can, and presumably will, be addressed by the Reports Analysis Division's review of the reports, further amendment by the Committee, and possibly the issuance of one or more Requests for Additional Information.

7. "Using assets paid for by a state-level campaign finance committee to support a federal congressional campaign committee."

The Complaint alleges that, "at multiple events," Rep. Kwasman—who is a sitting member of the Arizona state legislature—"has used assets paid for from his state legislative campaign committee to support his congressional campaign." The Complaint does not identify the events in question, or the assets, but has included in Appendix C two pictures in which Rep. Kwasman is surrounded by supporters and "Adam Kwasman - State Representative" signs.

This allegation merits little more than a statement of the obvious, which is that it is ridiculous. At risk of lending it any more credit than it deserves: The Complaint fails to identify when (*e.g.*, before, during or after the testing the waters period or candidacy) or where (at a state legislative event or congressional campaign event) the pictures were taken; and the signs on their face do not support Rep. Kwasman's candidacy for Congress, but rather, make reference only to his ongoing service as a state representative.



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8. "Marking campaign materials with a disclaimer for a campaign committee that does not exist."

The Complaint alleges that Rep. Kwasman and the Committee have distributed campaign materials bearing the disclaimer, "Paid for by Kwasman for Congress, Exploratory," and claims that no such committee ever was registered with the Commission.

"Kwasman for Congress, Exploratory" was not registered with the Commission because it was not required to be registered with the Commission. It was a Section 527 organization that was properly registered with the Internal Revenue Commission for the purpose of accepting contributions and making expenditures in furtherance of Rep. Kwasman's testing the waters activities. See Exhibit A.

Conclusion

For all of these reasons, I request the Commission to dismiss this Complaint in the exercise of its prosecutorial discretion, as not warranting any further use of the Commission's time and resources. The Commission has other processes in place to address the issues raised in points five and six of the Complaint, and the remaining points are either inconsequential or unfounded and meritless.

On behalf of the Committee and Rep. Kwasman, thank you for your consideration of this response. Please contact me by telephone at (202) 281-5463 or e-mail to Chris@Ashby-Law.com if you have questions or need additional information.

Sincerely,



Chris Ashby
Counsel for Kwasman for Congress, Adam C. Kwasman, Treasurer

cc: The Hon. Adam C. Kwasman



EXHIBIT A

Form
(Rev. July 2003)**8871**Department of the Treasury
Internal Revenue Service**Political Organization
Notice of Section 527 Status**

OMB No. 1545-1693

Part I General Information**1 Name of organization**

Kwasman for Congress Exploratory

Employer identification number

42 - 2381368

2 Mailing address (P.O. box or number, street, and room or suite number)

P.O. Box 68739

City or town, state, and ZIP code

Oro Valley, AZ 85737 -

3 Check applicable box: ☒ Initial notice ☐ Amended notice ☐ Final notice**4a Date established**

07/08/2013

4b Date of material change

07/10/2013

5 E-mail address of organization

Info@adamkwasman.com

6a Name of custodian of records

Daniel J. Maza

6b Custodian's address

P.O. Box 68739

Oro Valley, AZ 85737 -

7a Name of contact person

Christopher M. DeRose

7b Contact person's address

P.O. Box 68739

Oro Valley, AZ 85737 -

8 Business address of organization (if different from mailing address shown above). Number, street, and room or suite number

P.O. Box 68739

City or town, state, and ZIP code

Oro Valley, AZ 85737 -

9a Election authority

NONE

9b Election authority identification number**Part II Notification of Claim of Exemption From Filing Certain Forms (see instructions)****10a Is this organization claiming exemption from filing Form 8872, Political Organization Report of Contributions and Expenditures, as a qualified state or local political organization? Yes ☐ No ☒****10b If 'Yes,' list the state where the organization files reports:****11 Is this organization claiming exemption from filing Form 990 (or 990-EZ), Return of Organization Exempt from Income Tax, as a caucus or associations of state or local officials? Yes ☐ No ☒**

Part III Purpose...

12 Describe the purpose of the organization

To serve as the congressional exploratory committee of Adam Kwasman.

2014-04-17 21:03:26 (GMT) 15712570926 From: Chris Ashby - Ashby Law

Part IV List of All Related Entities (see instructions)**13 Check if the organization has no related entities**..... ☒

14a Name of related entity	14b Relationship	14c Address
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Part V List of All Officers, Directors, and Highly Compensated Employees (see instructions)

15a Name	15b Title	15c Address
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Christopher M. DeRose	Chairman	P.O. Box 68739 Oro Valley, AZ 85737 -
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Daniel J. Maza	Treasurer, Custodian of Records	P.O. Box 68739 Oro Valley, AZ 85737 -
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Under penalties of perjury, I declare that the organization named in Part I is to be treated as a tax-exempt organization described in section 527 of the Internal Revenue Code, and that I have examined this notice, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. I further declare that I am the official authorized to sign this report, and I am signing by entering my name below.

Christopher M. DeRose

07/10/2013

**Sign
Here**

Name of authorized official

Date

[Login](#)[Initial](#)[Submit](#)

You have successfully submitted Form 8871

Your confirmation number is 8617897

You need to sign and mail in Form 8453-X Declaration of Electronic Filing. Please click the link below to view Form 8453-X the Declaration of Electronic Filing, print it, sign it, and mail it to Internal Revenue Service Center, Ogden, UT 84201. The Internal Revenue Service will mail you a username and password upon receipt of this form.

[View Form 8453-X](#)

You are required to maintain a copy of your Form 8871 at your principal place of business and major regional offices for public viewing during regular business hours. Click the link below to view and print a copy of your submitted Form 8871. If anyone requests a copy of your Form 8871 either in writing or in person, you may refer them to the copy posted on the Political Organization Disclosure website.

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